

Hearing Date: October 10, 2007

Hearing Date: 10:00 a.m. (prevailing Eastern time)

HALPERIN BATTAGLIA RAICHT, LLP
555 Madison Avenue-9th Floor
New York, NY 10022-3301
212-765-9100
Donna H. Lieberman (DL-3553)
Carrie E. Mitchell (CM-9134)

-and-

CHAMBLISS, BAHNER & STOPHEL, P.C.
1000 Tallan Building
Two Union Square
Chattanooga, TN 37402-2552
423-756-3000
Bruce C. Bailey (TBA #011217)

Attorneys for U.S. Xpress, Inc., Creditor

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X		
In re:	:	CHAPTER 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	CASE NO. 05-44481(RDD)
	:	
Debtors.	:	(Jointly administered)
-----X		

**RESPONSE OF U.S. XPRESS, INC. TO
DEBTORS' NOTICE OF DEADLINE TO FILE MOTION FOR
LEAVE TO FILE LATE CLAIM WITH RESPECT TO LATE
CLAIMS FILED BY STEPHANIE GRAY, U.S. XPRESS, INC., AND DAVID
WRIGHT AND MOTION FOR LEAVE TO FILE LATE CLAIM WITH
RESPECT TO ALLEGED LATE CLAIM FILED BY U.S. XPRESS, INC.**

1. On April 12, 2006, this Court entered an order setting July 31, 2006, as the bar date.

2. Debtors filed a series of Omnibus Claims Objections, seeking among others, to disallow the late-filed claims as untimely.

3. On February 8, 2007 U.S. Xpress, Inc. filed a response to Debtors' Seventh Omnibus Objection to Certain Claims (the "Response"). The Response is incorporated herein by reference.

4. U.S. Xpress, Inc. filed its claim for \$72,704.52 after the Bar Date.

5. U.S. Xpress did not receive the Bar Date Notice.

6. The Debtors urge that U.S. Xpress has not provided any objective evidence that the notice was not mailed or was mailed to an inaccurate address or returned as undeliverable.

7. U.S. Xpress has stated, however, that it did not receive the Bar Date Notice and Proof of Claim form and has noted that U.S. Xpress is entitled to but did not receive actual notice of the bar date. See City of New York v. New York, N.H. & H.R. Co., 344 US 293, 296 (1953); see also, In re: Drexel Burnham Lambert Group, Inc., 151 B.R. 674, 680 (Bankr. S.D.N.Y. 1993) ("according to well established case law, due process requires that a debtor's known creditors be afforded actual notice of the bar date.")

8. Due Process requires that Debtor not only create and mail notice of a Bar Date, but also take minimal steps to obtain correct address information for mailing a notice. Here, U.S. Xpress' registered agent could be obtained on the Internet with minimal effort. As shown on its own motion, Debtors did not address any notice to U.S. Xpress to any person; Bankruptcy Rule 7002(b)(3) requires service by mail to a corporation to be to an officer, managing or general agent, or other agent designated by law.

9. As shown in the attached Affidavit of Lisa Pate, Vice President and General Counsel, U.S. Xpress has established procedures in place for the receipt and handling of notices.

It has a registered agent for service in Tennessee and each state. She is the registered agent.

Debtors did not serve her or any identified person, apparently having made no effort to do so.

10. U.S. Xpress has checked and finds no evidence of receipt or entry of a calendar with respect to the bar date established by an Order of this Court setting a bar date on claims.

11. As U.S. Xpress was entitled to and did not receive actual notice of the Bar Date, the late filed claim should be allowed as filed.

Respectfully submitted,

HALPERIN BATTAGLIA RAICHT, LLP

By: /s/ Carrie E. Mitchell
Donna H. Lieberman (Bar No. DL-3553)
Carrie E. Mitchell (Bar No CM-9134)
555 Madison Avenue-9th Floor
New York, NY 10022-3301
Telephone: 212-765-9100
Facsimile: 212-765-0964
email: dlieberman@halperinlaw.net
cmitchell@halperinlaw.net

-and-

CHAMBLISS, BAHNER & STOPHEL, P.C.

By: /s/ Bruce C. Bailey
Bruce C. Bailey (TN Bar No. 011217)
1000 Tallan Building
Two Union Square
Chattanooga, TN 37402-2552
Telephone: 423-756-3000
Facsimile: 423-265-9574
email: bbailey@cbslawfirm.com

Attorneys for U.S. Xpress, Inc., Creditor